

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BENJAMIN FOOTE,

Defendant.

8:16CR365

ORDER

This matter is before the Court on the Defendant's Request for Nunc Pro Tunc Order, ECF No. 46; his Further Authority to Support Request for Nunc Pro Tunc Order, ECF No. 44; and his Request for Nunc Pro Tunc Order, ECF No. 47.

Defendant Benjamin Foote was sentenced on August 28, 2017, to a term of 46 months incarceration, to be served concurrent to the sentence imposed in Fremont County, Iowa, Docket # FECR 007797, and to be followed by a term of three years of supervised release. This Court recommended to the Bureau of Prisons that the "Defendant should be given credit for time served." See Judgment, ECF No. 41, Page ID 99. He now seeks an order from this Court directing the Bureau of Prisons to give him credit for time he served in the custody of the State of Iowa in case number # FECR 007797, from the time of the filing of his federal detainer on February 7, 2017.

The Defendant's request will be denied, because (1) this Court's recommendation to the Bureau of Prisons was to ensure that the Defendant received credit for any time served in federal custody on the instant case before the time of sentencing, and the lodging of a federal detainer alone did not place the Defendant in federal custody; (2) the Court defers to the Bureau of Prisons to calculate any such time

served in federal custody on the instant offense; and (3) although the Defendant's sentence was made to run concurrent with the sentence imposed by the state of Iowa, the concurrent nature of the sentence began at the time the sentence was pronounced, and did not apply retroactively.

Accordingly,

IT IS ORDERED:

The Defendant's Motions seeking a Nunc Pro Tunc Order, ECF Nos. 44, 46, and 47 are denied.

Dated this 19th day of June, 2018.

BY THE COURT:

s/Laurie Smith Camp
Chief United States District Judge